Supreme Court, U.S.
FILED

No. 101033

DEC 14 2010

OFFICE OF THE CLERK

In the

Supreme Court of the United States

Dorothy M. & Jarrett W. Jarvis

Vs.

Lowndes Co., Ga. Sheriff's Department & Board of County Commissioners

On Petition For Writ of Certiorari

To the United States Court of Appeals 11th District and United States District Court for Middle Georgia

PETITION FOR WRIT OF CERTIORARI

Dorothy M. & Jarrett W. Jarvis

4216 Pinebrook Dr. Lake Park, Ga.

31636

Questions presented for review

In a case filed under 42 U.S.C. 1983

1) Is the Lowndes Co. Ga. Sheriff's Department a legal entity subject to suit?

2) Is the Lowndes Co. Ga. Board of County Commissioners subject to suit when passing a county ordinance in violation of state law?

3) Is the Lowndes Co. Ga. Board of County Commissioners responsible for the actions of their employees in enforcing an ordinance which is in direct violation of state law?

4) Does the clerk of the United States District Court Middle District of Georgia have the legal authority to require Appellants to pay the legal fees of Appellees?

5) Did the clerk for the United State Court of Appeals 11th Circuit act prematurely in dismissing the Appellants appeal for failure to produce record excerpts within a specific time frame?

6) Did the United States District Court of Appeals 11th Circuit act prematurely in denying the Appellants Motion to Set Aside Dismissal and Remedy for Default?

Parties to Proceeding

Honorable Frank M. Hull and Rosemary Barkett, Circuit Judges for the United States Court of Appeals for the 11th Circuit.

Honorable Hugh Lawson, Senior Judge for the United States District Court for the Middle District of Georgia Valdosta Division.

Gregory J. Leonard, Clerk for the United States District Court for the Middle District of Georgia Valdosta Division.

John Ley, Clerk for the United States Court of Appeals for the 11th Circuit.

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Opinions Below

Appellants are unaware if the opinion has been published.

Jurisdiction

1) 09/30/07 · date event in question occurred in Lowndes Co., Ga.

2) 07/14/09 · complaint was filed in the United States District Court for the Middle District of Georgia Valdosta Division.

3) 06/17/10 · complaint was dismissed by said court.

4) 06/21/10 – Notice of Intent to Appeal filed.

5) 08/24/10 – Entry of Dismissal.

6) 08/28/10 – Motion to Set Aside Dismissal Submitted.

7) 09/23/10 – Motion denied.

Constitutional and Statutory Provisions Involved

The Appellants Bill of Rights under the 4th Amendment referencing unreasonable search and seizure, 5th Amendment referencing abuse by government and 8th Amendment referencing cruel and unusual punishment to the United States Constitution were violated on 09/30/07.

Statement of the Case

On September 30, 2007, a false report was called into the Lowndes Co. Sheriff's Department concerning two dogs owned by Jarrett W. Jarvis maintained on the property of his mother Dorothy M. Jarvis. The report stated the dogs maintained at D. Jarvis' residence had chased 3 kids from her residence. Witness Dillion Wynn who the dogs reportedly chased has stated the dogs never left the property nor chased him as the complainant had indicated in his call placed to 911. Report filed by Animal Control Officer Don Van Pelt states same. Upon the arrival of two Lowndes Co. Sheriff Department Deputies being Deputy Troy Black and Staff Sgt. Jimmy Blanton, followed some time later by an employee of the Lowndes Co. Board of County Commissioners acting in the capacity of the county's Animal Control Officer, a decision was made to remove the dogs from the residence not for the dogs leaving the property, having bit someone, or showing

signs of illness, but because the dogs in question did not have a rabies tag displayed on their collars as required by the animal control ordinance passed by the Lowndes Co. Board of County Commissioners on May 23, 2006. Jarrett W. Jarvis tried to explain via phone call to Staff Sgt. Blanton the dogs were up on their shots, the reason why the tags were not on the collar as they are always falling off and being lost, offered the contact information to the pets veterinarian so as to validate the dogs shots status, as well as a plea to contact Appellants family member Kenneth Wheeler (who is also a Lowndes Co. Deputy) so that he can advise as to the on-going harassment of D. Jarvis by the complainant, pending the arrival of Jarrett W. Jarvis who was enroute to the residence with the tags. The plea was to no avail. Regardless of the objection of D. Jarvis in that the officer's must 1st secure a warrant to remove the animals, the two Lowndes Co. Deputies and Animal Control Officer Don Van Pelt then went onto D. Jarvis'

property. As D. Jarvis was retreating to the inside of her residence to await for her son J. Jarvis, Deputy Troy Black took a hold of her forcing her to the ground while being handcuffed behind her back. Their actions caused both physical and physiological injury to Appellants.

On June 17, 2010, the US MIDDLE DISTRICT COURT OF GEORGIA entered an order dismissing the law suit based on the following reasons.

1) The Court ruled the Lowndes Co. Sheriff's Department is not a legal entity subject to suit citing CRAVEY v. MUTUAL INSURANCE RATING BUREAU., and Dean v. Barber, adding Sheriff's departments are not usually considered legal entities subject to suit.

Legal entity refers to "anything other than a natural person that can function legally, enter into a contract, sue or be sued, and make decisions through agents. A legal entity, under the law, is responsible

for its actions and can be sued for damages.

According to the O.C.G.A 31-22-9.1, a legal

entity is defined as a partnership, association, joint

venture, trust, governmental entity, etc.

In Cravey v. Mutual Insurance Rating Bureau, 214 Ga. 450, 105 S.E.2.d 497 (1958)], Cravey who was then the Georgia Insurance Commissioner filed suit in the Georgia Supreme Court alleging Mutual Insurance Rating Bureau did not have the capacity to sue. The court disagreed by unanimous decision.

In Dean v. Barber [951 F. 2d 1210 - Court of Appeals, 11th Circuit 1992], the 11th Circuit Court of Appeals ruled "capacity to sue or be sued shall be determined by the law of the state in which the district court is held." & "under Alabama law, a county sheriff's department lacks the capacity to be sued". There is no such law in Georgia barring a Sheriff's Department from being sued. Neither the District Court nor the Appellees attorney has identified Georgia State law supporting their position.

Therefore, the Lowndes Co. Sheriff's Department which is a local government entity cannot hide behind the 11th Amendment to the United States Constitution which applies only to state agencies.

2) The court ruled the plaintiffs' neither demonstrated the Board of County Commissioners directly participated in violating their constitutional rights nor specifically identified any policy or custom instituted by the Board of County Commission that violated their constitutional rights.

On May 23, 2006, Lowndes Co. Board of County Commissioners passed an animal control ordinance regulating rabies control. Said ordinance requires a rabies tag to be displayed on a dogs color.

O.C.G.A. 31-19-6 repealed the requirements of rabies tags on July 1, 1992.

O.C. G. A 31-19-1 states each county board of health shall have the primary responsibility for the control of rabies within its jurisdiction. Such boards, in addition to their other powers, are empowered and required to adopt and promulgate rules and

regulations for the prevention and control of such

diseases.

O.C.G. A 31-19-5 states the county boards of health are empowered and required to adopt and

promulgate rules and regulation requiring canines

and felines to be inoculated against rabies and to prescribe the intervals and means of inoculation, etc.

O.C.G. A. 31-19-7 states the county board of health shall appoint a person who is knowledgeable of animals to be the county rabies control officer. It shall be the duty of

the county rabies control officer to enforce this chapter and other laws which regulate the activities of dogs.

According to the Georgia Rabies Control Manual, an animal is considered currently vaccinated not by a tag but by a vaccination certificate.

In Monroe V. Pope, 365 U.S. 167 (1961), the court ruled government officials acting outside the scope of the authority granted by State Law can be held liable for their actions.

In Monell V. Department of Social Services of New York, 436 U.S. 658. 701 (1978), the court ruled local governments are subject to suit.

In Pembaur v. City of Cincinnati, 475 U.S. 469 (1986), the court ruled an unconstitutional policy may exist if an

isolated action of a government employee is dictated by a "final policymaker,"

In Owen V. City of Independence, MO, 445 U.S. 621 (1980), the court ruled local governments have no immunity from damages flowing from their constitutional violations, and may not assert the good faith of its agents as a defense to liability.

In Howell v. Rose, 496 U.S. 356 (1990), the court ruled state law sovereign immunity and state law limitations on damages do not protect local governments from liability under section 1983. Therefore, the Lowndes Co. Board of County Commissioners did not have the legal authority under Georgia law to regulate rabies control, their employee acting in the capacity of animal control officer lacks the legal authority to enforce the ordinance as said employee was not appointed by the Board

of Health in the capacity of Rabies Control Officer, and all parties involved are guilty of a misdemeanor as outlined in O.C.G.A 31-19-10 for violating chapter 31.

On 06/17/10, Gregory J. Leonard, Clerk for the United States District Court for the Middle District of Georgia Valdosta Division issued an order requiring Appellants to pay for the attorney fees of the Appellees. According to Christiansburg Garment Co. v. E.E.O.C., 434 U.S. 412, 421 (1978)., the court ruled only upon a finding that an action was frivolous, unreasonable, or without foundation is a plaintiff responsible for legal fees.

Since there has been no ruling on said matter, the Appellants are not responsible for pay said fees.

On 08/24/10, John Ley, Clerk for the United States Court of Appeals for the 11th Circuit issued an Order of Dismissal citing Appellants failure to file

record excerpts.

Upon receiving the notice on 08/27/10, Brenda Weigmann with said court was contacted in an effort to understand the reason for the denial. After it was explained there was a requirement to file said documents, a Motion to Set Aside was prepared outlining the misunderstanding in that clerical support staff at the United States District Court for Middle Georgia in Valdosta stated verbally on 06/21/10 there was no need to provide said documents as their court file would be packaged and sent to Atlanta. The requested items were mailed on the 28th via Overnight US Mail. On 09/23/10, the appellants request was denied.

The Appellants requested assistance in filing the necessary documents as listed on the Notice of Intent to Appeal to no avail, information was provided by court officials in Valdosta which was misleading, this case being brought without counsel, the rules for filing are

vague to a person not having received formal training as either an attorney or law clerk, no harm was intended or caused by the delay, the delay in providing the required was no willful, and the information was provided immediately via overnight mail.

Reason for Granting the Petition

Upon the founding of our great country, the founding fathers wrote the United States Constitution explicitly listing the separation of powers between the three branches of government. The intent was to ensure neither branch assumed absolute power while the Judicial branch was to ensure the protection of our individual rights of citizens. Shortly thereafter, the Bills of Rights were ratified with the intent to ensure the citizens of the United States did not face the same oppression as under British Rule. Government is prohibited from Unreasonable Search and Seizure, Cruel and Unusual Punishment, and Abuse of Government. On 09/30/07, Appellant Dorothy M. Jarvis, age 69 and in fair health, was at her residence not bothering anyone. The dogs were confined to the residence by an electronic apparatus known as an invisible fence. The ordinance passed by the Lowndes Co. Board of

County Commissioners is in direct violation of state law. There is no requirement in the State of Georgia for a dog to wear a rabies tag, only the requirement for the dog to be either identified with a microchip, plastic tag, or metal tag. Both dogs in question have always worn a collar with a metal plate identifying the owner as well as contact information. Not only are the dogs not classified as contraband, the officers were present for over 45 minutes allowing ample time to secure a warrant and they asked for assistance in obtaining possession of the dogs. All three actions are covered in Coolidge V. New Hampshire 403 US 443 (1971) making the search and seizure illegal. according to Land V. State, 259 Ga. App. 860, 863 (2003), Appellant D. Jarvis had every right to resist an unlawful search and seizure. Her only resistance was to attempt to return to the inside of her dwelling to wait for her son. In response Deputy Troy Black grabbed her arms taking her to the

ground with no consideration of her age, mental health, physical health, etc. as required in Graham V. Conner 490 U.S. 386 (1989). Appellant D. Jarvis was maliciously prosecuted in Georgia State Court for Obstruction of an Officer. The sentencing court was advised as to state law governing rabies control as well as the issues as outlined in Coolidge V. New Hampshire 403 U.S. 443 (1971) to no avail. Said action is in violation of the 5th Amendment.

All the Appellants want is to hold Appellees responsible for their actions, have the county ordinance which is still being enforced ruled Unconstitutional, to ensure what occurred on 09/30/07 does not occur to anyone else, and the ultimate sacrifices made by hundreds of thousands of service men and women to protect our freedoms and the freedom of other nations does not go in vain.

The Appellants therefore respectfully request the court accept this case for review and is remand back to the United States District Court for the Middle District of Georgia Valdosta Division for the scheduling of a trial.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEROGIA

VALDOSTA DICISION

DOROTHY M. JARVIS and 7:09-CV-92(HL)

JARRETT W. JARVIS

V.

LOWNDES CO., GA. SHERIFF'S

DEPARTMENT and LOWNDES

CO. GA BOARD OFCOUNTY

COMMISSIONERS

ORDER

Before this court is Defendants Lowndes County Sheriff's Department ("Sheriff's

Department") and Lowndes County Board of County Commissioners' (County Commissioners") Motion to Dismiss (Doc 24).

Pro se Plaintiffs Dorothy Jarvis and Jarrett Jarvis ("Plaintiffs") filed this action under 42 U.S.C. 1983 on July 14, 2009, alleging that Defendants violated their Fourth and Fifth Amendment rights when two sheriff's deputies and an animal control officer removed Plaintiff's two dogs from their property because the dogs did not have rabies tags on their collars. Plaintiffs are seeking $2.5 million in damages.

On November 25, 2009, Defendants filed a Rule 12(b)(6) Motion to Dismiss all of Plaintiff's claims for failure to state a claim upon which relief may be granted. For the following reasons, Defendants

Motion is granted.

I. Defendant Sheriff's Department is not a proper party to

this action.

Under Georgia law, "in every suit there must be a legal entity as the real plaintiff and the real defendant." Cravey . Se. Underwriters Ass'n, 214 Ga. 450, 453, 105 S.E.2nd 497, 500, (1958). Georgia recognizes three classes of legal entities: (1) natural persons, (2) an artificial person (a corporation), and (3) such quasi artificial persons as the law recognizes as capable to sue." Id. Sheriff's Departments are not usually considered legal entities subject to suit. Dean v. Barber, 951 F.2d 1210, 1214 (11th Circuit. 1992): see also Lawal v Fowler, 196 Fed Appx. 765, 768 (11th Cir Aug. 10. 2006) (unpublished)

(concluding the plaintiff failed to state a claim because the county sheriff's department was not a legal entity subject to suit).

Therefore, because the Lowndes County Sheriff's Department is not a legal entity subject to suit, it is not a

property party to this lawsuit and Plaintiffs' claim against it are dismissed.

II. Defendant County Commissioners is not liable for the actions of the sheriff's deputies or the animal control officer.

A government entity cannot be held liable under 42 U.S.C. 1983 based upon theories of vicarious liability or respondents superior. Monell v. Dep't of Soc. Servs. of City of N.Y., 436 U.S. 658, 690, 98 S. Ct. 2018, 2036, 56 L Ed. 2nd 611 (1978). Rather, in order for a government entity to be liable under 42 U.S.C. 1983, the government entity must be the moving force behind the alleged constitutional deprivation. Id. At 694, 98 S. Ct. 2037-38. Plaintiffs must demonstrate either (1) the Defendant County Commissioners directly participated in the alleged constitutional deprivation or (2) that there is some other casual connection between the officials' acts or omissions

and the injury alleged sustained. Brown v. Crawford, 906 F.2d 667, 671, (11th Cir. 1990. A casual connection can be established by showing that the government entity implemented or promulgated an official policy or custom, and that this policy or custom resulted in the constitutional violation.Id.

Plaintiffs have neither demonstrated that Defendant County Commissioners directly participated in violating their constitutional rights nor specifically identified and policy or custom instituted by Defendant County Commissioners that violated their constitutional rights. Instead Plaintiff's vaguely reference an "ordinance regulating rabies control." (Doc 1). There is not further identification of this ordinance. The Court is not required to perform its own research or guesswork in order to discover which policy or custom Defendant violated. Rather, in order to survive the motion to dismiss standard

under Fed R. Civ. P 12(b) (6), Plaintiffs must provide the grounds for their entitlement to relief, sufficient to give Defendants fair notice of their claims and grounds upon which they rest. Bell v. Atlantic Corp. Twombly, 550 U.S. 544, 555, 127, S. Ct. 1955, 1964, 167, L. Ed. 2d 929 (2007). Relying merely on conclusory allegations are taken as true, must be enough to raise a right to relief above the level of speculation. Id. 'plaintiffs have failed to satisfy this standard. Therefore, Plaintiffs have not stated a claim against the Defendant County Commissioners, the Plaintiffs claims against it are dismissed.

SO ORDERED, this the 17th day of June, 2010.

"s/" Hugh Lawson

Hugh Lawson, Senior Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

VALDOSTA DIVISION

Dorothy M. Jarvis, et al., Case #7:09-CV-92 (HL)

vs.

Lowndes County Sheriffs

Department, et al.,

JUDGEMENT

Pursuant to the Court's Order dated June 17, 2010, and for the reasons state therein, Judgment is entered in favor of the Defendants. Plaintiffs shall recover nothing of the Defendants. Defendants shall also recover cost of this action.

This 18th day of June, 2010.

Gregory J. Leonard, Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 10-12861-EE

DOROTHY M. JARVIS,

JARRETT W. JARVIS,

versus

LOWNDES COUNTY SHERIFF'S DEPARTMENT,

LOWNDES COUNTY BOARD OF COMMISSIONERS,

Appeal from the United states District Court

For the Middle district of Georgia

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ENTRY OF DISMISSAL: Pursuant to the 11th Cir R. 42-1(b), theres appeals are DISMISSED for want of

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prosecution because the appellant Dorothy M. Jarvis and Jarrett W. Jarvis failed to file record excerpts within the time fixed by the rules, effective August 24, 2010.

John Ley

Clerk of Court of the United States Court

Of Appeals of the Eleventh Circuit

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENT CIRCUIT

RE: 10-12861-EE

DOROTHY M. JARVIS, Stamped September 23, 2010

JARRETT W. JARVIS,

versus

LOWNDES COUNTY SHERIFF'S DEPARTMENT,

LOWNDES COUNTY BOARD OF COMMISSIONERS

Appeal from the United States District Court for the

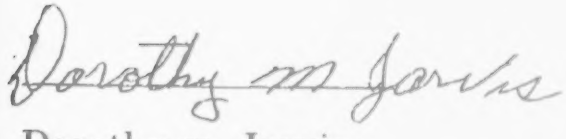
Middle District of Georgia

Before: Hull and Barkett, Circuit Judges

By the Court:

Appellant's motion to reinstate this appeal is denied.

Jarrett w. Jarvis



Dorothy m. Jarvis

CERTIFICATE OF COMPLIANCE

No.

My Client(s),

Dorothy M. Jarvis
Jarrett W. Jarvis
v.
Lowndes Co., Ga. Sheriff's Department
Lowndes County Board of County Commissioners

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 3,800 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 8, 3010

Jarrett W. Jarvis